

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.: 09/785,783 Filing Date: February 16, 2001
Confirmation No.: 3408
First Named Inventor: Robert A. Foster
Assignee: Financial Systems Technology (Intellectual Property) Pty. Ltd.
Examiner: Fischer, Andrew J. Art Unit: 3627
Attorney Docket No.: M-9381 US

San Jose, California
June 22, 2006

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Dear Sir:

Pursuant to 37 C.F.R. § 41.37, Appellant submits the present Appeal Brief in support of the Notice of Appeal filed on February 14, 2007.

REAL PARTY IN INTEREST

The Assignee, Financial Systems Technology (Intellectual Property) Pty, Ltd., is the real party in interest.

RELATED APPEALS AND INTERFERENCES

No other prior or pending appeal, interference or judicial proceeding is known to Appellant, the Appellant's legal representative, or Assignee which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1-38 are pending, rejected and appealed.

STATUS OF AMENDMENTS

Subsequent to the final rejection of Claims 1-38 under 35 U.S.C. § 112, second paragraph, and under 35 U.S.C. § 103(a) on November 7, 2006 ("Final Office Action"), Appellant filed on February 14, 2007 a Notice of Appeal and requested a Pre-Appeal Brief Review, accompanied by a Reasons for Requesting Pre-Appeal Brief Review ("Pre-Appeal Brief Review Request"). On April 12, 2007, a Panel Decision from a Pre-Appeal Brief Review was mailed, advising Appellant to proceed to the Board of Patent Appeals and Interferences.

SUMMARY OF CLAIMED SUBJECT MATTER

According to independent Claim 1, the present invention provides a method applicable to pricing transactions in real-time. The method includes: (a) receiving a request for a real-time price quote for a transaction of a first account, the request being received at a first instance in time during a billing cycle (see, for example, Appellant's Specification, at page 32, lines 10-14); (b) determining a first production service, the first production service being a component of the transaction (see, e.g., Appellant's Specification, at page 32, lines 15-19, page 34, lines 5-15 and page 36, lines 17-19); (c) determining a count of first production service instances representing the first production service in the transaction (see, e.g., Appellant's Specification, at page 37, lines 21-22); (d) determining a billable entity for the transaction, the billable entity comprising one or more related accounts, wherein the one or more related accounts includes the first account (see, e.g., Appellant's Specification, at page 37, line 25 to page 38, line 4); (e) determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction (see, e.g., Appellant's Specification, at page 38, line 11-20); (f) determining a price applicable to the total of the first production service instances based on a pricing method (see, e.g., Appellant's Specification, at page 38, lines 21-30); and (g) apportioning the price to the transaction based on the count of the first production service instances in the transaction (See, e.g., Appellant's Specification, at page 38, line 31 to page 39, line 7).

According to independent Claim 9, the present invention provides a method for

real-time pricing, which includes: (a) receiving a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance relating to a first production service (see, e.g., Appellant's Specification, at page 37, lines 8-11, page 36, lines 11-19 and page 34, lines 1-15); (b) based on a pricing relationship, determining a total count of production service instances consumed during the billing cycle up to the first instance in time (see, e.g., Appellant's Specification, at page 38, lines 11-29); (c) determining a billable service appropriate for the first production service (see, e.g., Appellant's Specification, at page 37, lines 21-25); (d) calculating a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed (see, e.g., Appellant's Specification, at page 38, lines 21-30); and (e) apportioning the price to the transaction based on the number of first production service instances in the transaction (see, e.g., Appellant's Specification, at page 38, line 31 to page 39, line 4).

According to independent Claim 26, the present invention provides a computer-readable storage medium on which is stored computer instructions which, when executed by a computer, cause the computer to: (a) receive a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance a first production service (see, e.g., Appellant's Specification, at page 37, lines 8-11, page 36, lines 11-19 and page 34, lines 1-15); (b) based on pricing relationship, determine a total count of production service

instances consumed during the billing cycle up to the first instance in time (see, e.g., Appellant's Specification, at page 38, lines 11-29); (c) determine a billable service appropriate for the first production service (see, e.g., Appellant's Specification, at page 37, lines 21-25); (e) calculate a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed (see, e.g., Appellant's Specification, at page 38, lines 21-30); (f) apportion the price to the transaction based on the number of first production service instances in the transaction (see, e.g., Appellant's Specification, at page 38, line 31 to page 39, line 4); and (g) provide the price as data to be included in determining service charges to a customer associated with the transaction (See, e.g., Appellant's Specification, at page 32, lines 10-14) .

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

(a) The Examiner rejected Claims 1-38 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which Appellant regards as his invention; and

(b) The Examiner rejected Claims 1-38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,101,484 ("Halbert"), in view of U.S. Patent 6,324,522 ("Peterson").

Appellant requests that the Board of Appeals and Interferences review these rejections of Claims 1-38.

ARGUMENT

(a) The Examiner rejected Claims 1-38 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to point out and distinctly claim the subject matter which Appellant regards as his invention

In the Final Office Action, the Examiner rejected Claim 1-38 under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner states:

In claims 1-38, it is unclear what Applicant asserts as a transaction or contract to buy. In view of James J. White and Robert S. Summer's Uniform Commercial Code, 4th Ed., ("White & Summers") § 3-8, it is the Examiner's factual determination that what constitutes an end of sale is indefinite. In other words, a standard contract requires at a minimum, a firm price and quantity. White & Summers states that when price is agreed to at a later date, the transaction has in effect not ended. Only when the price is known is the transaction actually completed. It is therefore indeterminate as to when the transaction is completed.

In citing White & Summers for the meaning of the term "transaction," the Examiner ignores Appellant's Specification, which provides a clear and unambiguous meaning for the term "transaction" applicable to the claimed subject matter, on page 32, lines 3-5:

"Transaction" here generally refers to a product or service that is offered by a provider (e.g., manufacturer, retailer, wholesaler, distributor, service provider, etc.) for consumption by one or more consumers.

As pointed out in Appellant's previous Amendment of November 22, 2005 ("Previous Amendment"), the term "transaction," as recited in the Specification, is consistent with its ordinary and customary meaning. Therefore, the Examiner's attempt to import a much narrower and inappropriate meaning based on contract law for the term

“transaction” from White & Summers -- an extrinsic source -- is improper. In response to Appellant’s argument, the Examiner states in the Final Office Action:

... [W]ords of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification. The definition of “transaction” presented in the Applicant's Amendment is unclear as it states that a transaction refers to a product or service that is offered for consumption, but does not state what is actually being claimed as a “transaction”. Webster defines a transaction to include an exchange of goods, services and funds. Is the Applicant merely claiming the offering of goods or services and no actual exchange? It remains unclear if the Applicant is claiming an “offer” or an actual “transaction” where an exchange occurs.

Appellant respectfully disagrees. The meaning given to the term “transaction” in Appellant’s Specification, as quoted above, is substantially the same as the meaning given in Webster, which the Examiner provides as example here. Appellant respectfully submits that Appellant’s claims comply with 35 U.S.C. § 112, second paragraph, even if Webster’s meaning for “transaction” above is adopted. Thus, Appellant’s Specification uses the term “transaction” consistently with its ordinary and customary meaning. Therefore, the Examiner’s insistence in giving the term “transaction” its narrow, inappropriate, technical meaning under contract law, as used by White & Summers, is simply unreasonable and incorrect. Reversal of the Examiner’s rejection of Claims 1-38 under 35 U.S.C. § 112, second paragraph, is therefore requested.

(b) The Examiner rejected Claims 1-38 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 6,101,484 (“Halbert”), in view of U.S. Patent 6,324,522 (“Peterson”)

The Examiner rejected Claims 1-38 under 35 U.S.C. § 103(a) as being unpatentable over Halbert, in view of Peterson. The Examiner relied on Halbert's col. 4, lines 25-29 and Peterson's col. 27:

Halbert discloses a method/computer storage medium for pricing transactions in real-time, comprising: defining a first transaction (the purchase of a product or service) with a first production service being a component of the transaction (the service is a sub component of the featured or sold product, see C4, - L25-29 which states "Featured Product: Any product or product variant identified for sale through a co-op. For purposes of this application, the term 'featured product' includes any services which might be identified for sale through a co-op."); determining a count of first production service instances (determining a count of products purchased by a particular consumer); determining a billable entity for the transaction with the billable entity being at least one financial account (the customer's account number such as credit card or checking account number is on file in the system); determining a price applicable to the total of the first production service instances (the price is based upon the aggregate of all the products purchased to take advantage of volume discounting). Halbert does not directly disclose requesting a price quote.

Peterson directly discloses requesting a quote at column 27 (*i.e.* C27). Therefore it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Halbert to include Peterson's ability to ask for a price quote. By including a price quote feature in Halbert, Before any of the purchasing in Halbert begins, a user may simply ask the system for an initial price quote to get a minimum starting point of where the price begins. By getting an initial price quote, the customer is in a better position to evaluate the benefits of joining Halbert's system.

In response, in Appellant's Previous Amendment, Appellant quoted Halbert's col. 4, lines 25-29 in its entirety to demonstrate that the portion of Halbert relied upon by the Examiner does not disclose or suggest the "determining" steps in the limitations of Applicant's Claims 1, 9 and 26, each of which reciting a billing cycle, production service instances and a pricing method:

Featured Product: Any product or product variant identified for sale through a co-op. For purposes of this application, the term 'featured product' includes any services which might be identified for sale through a co-op.

HTTP: The Hyper-Text Transfer Protocol.

The specific recitations of Claims 1, 9 and 26 are:

1. A method for pricing transactions in real-time, the method comprising:

receiving a request for a real-time price quote for a transaction of a first account, the request being received at a first instance in time during a billing cycle;

determining a first production service, the first production service being a component of the transaction;

determining a count of first production service instances representing the first production service in the transaction;

determining a billable entity for the transaction, the billable entity comprising one or more related accounts, wherein the one or more related accounts includes the first account;

determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;

determining a price applicable to the total of the first production service instances based on a pricing method; and

apportioning the price to the transaction based on the count of the first production service instances in the transaction.

* * *

9. A method for real-time pricing comprising:

receiving a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance relating to a first production service;

based on a pricing relationship, determining a total count of production service instances consumed during the billing cycle up to the first instance in time;

determining a billable service appropriate for the first production service;

calculating a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed; and

apportioning the price to the transaction based on the number of first production service instances in the transaction.

* * *

26. A computer-readable storage medium having stored thereon computer instructions that, when executed by a computer, cause the computer to:

receive a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance a first production service;

based on pricing relationship, determine a total count of production service instances consumed during the billing cycle up to the first instance in time;

determine a billable service appropriate for the first production service; calculate a price for the first production service from a price table based on

a first attribute for the billable service and the total count of production service instances consumed;

apportion the price to the transaction based on the number of first production service instances in the transaction; and

provide the price as data to be included in determining service charges to a customer associated with the transaction.

In the Previous Amendment, Appellant also pointed out that the specific limitations are also neither disclosed nor suggested by Peterson. In response to the Previous Amendment, the Examiner states in the Final Office Action:

Examiner notes that the rejection is based on the Halbert reference, not just col. 4, lines 25-29. Examiner contends that Halbert discloses all the determining steps. For example the determining of a first production service (C4, lines 25-29 disclose where the featured product includes services which is inherently determined when the seller offers the services for sale via the system), the first production service being a component of the transaction (for example in the sale of a service the service is a component of the transaction. Examiner, for example, construes this to include services such as the sale of a service warranty contract.);

The Examiner then further refers to Halbert's col. 3, lines 7+ and Halbert's Abstract. For brevity, the Examiner's lengthy comment is not reproduced. However, the Examiner's reading of Appellant's claims on Halbert is not supported by Halbert. For example, with respect to Claim 1's limitations:

determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;

determining a price applicable to the total of the

first production service instances based on a pricing method;

the Examiner states:

Halbert discloses, for example in the abstract, that the sale has a defined start time and end time which the Examiner is construing to be a “billing cycle”. When the sale ends a total of the number of services sold is inherently used in order to calculate the amount to be charged to the buyer's credit card account in order to obtain adequate funds. ... Halbert disclose the determining of a price based on a pricing method, for example in the abstract it discusses how the system uses a starting price and a product cost curve. In Halbert the cost is reduced as the number of goods/services purchased increases to take advantage of group buying discounting.

However, the Examiner's construction is unreasonable. If the Examiner construes the term “one or more related accounts” as a credit card account, then the “billing cycle” for such an account cannot be the “start time” and the “end time” of a single transaction (as the Examiner construed), but rather the time period when transactions are allowed to accumulate in the credit card account. If that is the case then, Halbert's price determination for a single transaction, as discussed in the Abstract and by the Examiner above, does not meet Claim 1's limitation “determining a price applicable to the total of the first production service instances based on a pricing method”, as Halbert does not disclose or suggest determining a price for a transaction based on the total up-to-date transactions in the credit card account in the present billing cycle. Therefore, at least for this reason, Claims 1-38 are allowable over the combined teachings of Halbert and Peterson. In addition, as clearly seen from Halbert's Abstract, Halbert relates to the operation of an on-line purchasing group. Claims 1-38 relate to the operations of a service provider in pricing its products. Halbert's disclosure of the operations on the

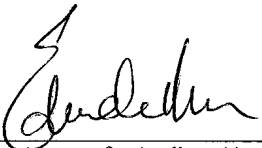
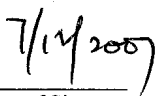
buyer's side is simply irrelevant.

The Examiner's comments in paragraphs 5-6 of the Office Action are irrelevant in view of the Examiner's failure to take Appellant's Specification into consideration in his construction of the claims (e.g., the Examiner ignored the meaning of the term "transaction" as used in Applicant's Specification, at page 32, lines 3-5, and also because the meaning provided in the Specification is consistent with the dictionary meaning advocated by the Examiner).

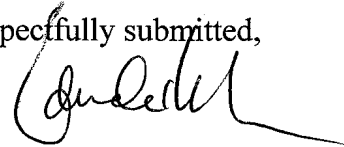
Therefore, Appellant submits that Claims 1-38 are allowable over Halbert, in view of Peterson. Reversal of the Examiner's rejection of Claims 1-38 under 35 U.S.C. § 103(a) is therefore requested.

Conclusion

For the reasons stated above, Appellant respectfully request that the Examiner's rejections of Claims 1-38 under 35 U.S.C. §§ 112 and 103 be reversed. If the Examiner or the Board has any questions regarding the above, the Examiner is requested to telephone the undersigned at (408) 392-9250.

Certificate of Transmission: I hereby certify that this correspondence is being transmitted to the United States Patent and Trademark Office (USPTO) via the USPTO's electronic filing system on July 12, 2007.	
	
Attorney for Applicant(s)	Date of Signature

Respectfully submitted,



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Appendix

1. A method for pricing transactions in real-time, the method comprising:

receiving a request for a real-time price quote for a transaction of a first account, the request being received at a first instance in time during a billing cycle;

determining a first production service, the first production service being a component of the transaction;

determining a count of first production service instances representing the first production service in the transaction;

determining a billable entity for the transaction, the billable entity comprising one or more related accounts, wherein the one or more related accounts includes the first account;

determining a total of the first production service instances associated with the one or more related accounts during the billing cycle up to the first instance in time, the total including the count of the first production service instances in the transaction;

determining a price applicable to the total of the first production service instances based on a pricing method; and

apportioning the price to the transaction based on the count of the first production service instances in the transaction.

2. The method of Claim 1, wherein the pricing method is “flat fee”.
3. The method of Claim 1, wherein the pricing method is “minimum revenue”.
4. The method of Claim 1, wherein the pricing method is “tiering”.
5. The method of Claim 1, wherein the pricing method is “volume discounts”.
6. The method of Claim 1 further comprising:
 - determining a billable service related to a pricing of the first production service; and
 - determining a price table related to the transaction, the price table containing a price for the billable service.
7. The method of Claim 1 further comprising: calculating a variance to the price comprising:
 - determining an end-of-period total of the first production service instances associated with the one or more related accounts during the billing cycle;
 - based on the pricing method, determining an end-of-period price applicable to the end-of-period total of the first production service instances; and
 - based on the end-of-period price, modifying the first price apportioned to

the transaction.

8. The method of Claim 1 further comprising:

determining one or more related production services, each of the one or more related production services being related to the first production service;

determining a count of related production service instances representing the number of related production services associated with the one or more related accounts during the billing cycle up to the first instance in time, the count of the related production service instances including the count of the first production service instances in the transaction;

based on the pricing method, determining a related production service price applicable to the count of the related production service instances; and

based on the count of the first production service instances in the transaction, apportioning the related production service price to the transaction.

9. A method for real-time pricing comprising:

receiving a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance relating to a first production service;

based on a pricing relationship, determining a total count of production service instances consumed during the billing cycle up to the first instance in

time;

determining a billable service appropriate for the first production service;

calculating a price for the first production service from a price table based on a first attribute for the billable service and the total count of production service instances consumed; and

apportioning the price to the transaction based on the number of first production service instances in the transaction.

10. The method of Claim 9 further comprising creating a record of the transaction.

11. The method of Claim 9 further comprising creating the first production service, the first production service being a component of the transaction.

12. The method of Claim 9, wherein the transaction is to be carried out for a customer, and wherein the method further comprises creating the pricing relationship, the pricing relationship related to the first production service and to the customer.

13. The method of Claim 9 further comprising creating the billable service related to a pricing of the first production service.

14. The method of Claim 9 further comprising creating the price table related to the transaction, the price table containing the first attribute for the billable service.

15. The method of Claim 9, wherein the pricing relationship relates to a billable entity.

16. The method of Claim 9, wherein the pricing relationship relates to one or more related accounts.

17. The method of Claim 9, wherein the pricing relationship relates to one or more related production services.

18. The method of Claim 9, wherein the total count of production service instances consumed comprises a count of the first production service instances consumed.

19. The method of Claim 9, wherein the total count of production service instances consumed comprises a count of production service instances consumed in one or more related accounts.

20. The method of Claim 9, wherein the first attribute comprises a pricing method.

21. The method of Claim 20, wherein the pricing method is “flat fee”.

22. The method of Claim 20, wherein the pricing method is “minimum revenue”.

23. The method of Claim 20, wherein the pricing method is “tiering”.

24. The method of Claim 20, wherein the pricing method is “volume discounts”.

25. The method of Claim 9 further comprising:

calculating a variance to the calculated price comprising:

based on the pricing relationship, determining an end-of-period count of production service instances consumed during the billing cycle;

calculating an end-of-period price for the first production service from the price table, based on the first attribute for the billable service and the end-of-period count of production service instances consumed; and

based on the end-of-period price, modifying the price apportioned to the transaction.

26. A computer-readable storage medium having stored thereon computer instructions that, when executed by a computer, cause the computer to:

receive a request for a real-time price quote for a transaction, the request being received at a first instance in time during a billing cycle, wherein the transaction comprises a number of first production service instances, each first production service instance a first production service;

based on pricing relationship, determine a total count of production service instances consumed during the billing cycle up to the first instance in time;

determine a billable service appropriate for the first production service; calculate a price for the first production service from a price table based on a first attribute for the billable service and the total count of

production service instances consumed;

apportion the price to the transaction based on the number of first
production service instances in the transaction; and

provide the price as data to be included in determining service
charges to a customer associated with the transaction.

27. The computer-readable storage medium of Claim 26, wherein the
pricing relationship relates to a billable entity.

28. The computer-readable storage medium of Claim 26, wherein the
pricing relationship relates to one or more related accounts.

29. The computer-readable storage medium of Claim 26, wherein the
pricing relationship relates to one or more related production services.

30. The computer-readable storage medium of Claim 26, wherein the total
count of production service instances consumed comprises a count of the first
production service instances consumed.

31. The computer-readable storage medium of Claim 26, wherein the total
count of production service instances consumed comprises a count of production service
instances consumed in one or more related accounts.

32. The computer-readable storage medium of Claim 26, wherein the first
attribute comprises a pricing method.

33. The computer-readable storage medium of Claim 26, wherein the

computer instructions that receive a request for a real-time price quote further comprise computer instructions that, when executed by a computer, cause the computer to record the transaction.

34. The computer-readable storage medium of Claim 26, wherein the computer instructions that receive a request for a real-time price quote further comprise computer instructions that, when executed by a computer, cause the computer to record the first production service, the first production service being a component of the transaction.

35. The computer-readable storage medium of Claim 26, wherein the computer instructions that receive a request for a real-time price quote further comprise computer instructions that, when executed by a computer, cause the computer to record the pricing relationship, the pricing relationship being related to the first production service.

36. The computer-readable storage medium of Claim 26, wherein the computer instructions that receive a request for a real-time price quote further comprise computer instructions that, when executed by a computer, cause the computer to record the billable service related to a pricing of the first production service.

37. The computer-readable storage medium of Claim 26, wherein the computer instructions that receive a request for a real-time price quote further comprise computer instructions that, when executed by a computer, cause the computer to record the price table related to the transaction, the price table containing the first attribute for the billable service.

38. The computer-readable storage medium of Claim 26, wherein the computer instructions that receive a request for a real-time price quote further comprise computer instructions that, when executed by a computer, cause the computer to:

based on the pricing relationship, determine an end-of-period count of production service instances consumed during the billing cycle;

calculate an end-of-period price for the first production service from the price table based on the first attribute for the billable service and the end-of-period count of production service instances consumed; and

based on the end-of-price, modify the price apportioned to the transaction.

EVIDENCE APPENDIX

None.

RELATED PROCEEDINGS APPENDIX

None.